INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 832

UNITED STATES OF AMERICA, PETITIONER

v.

HAROLD T. LINDSAY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Acting Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled cause on February 26, 1953.

OPINIONS BELOW

The opinion of the United States District Court for the District of Massachusetts (R. 40–42) is reported at 105 F. Supp. 467. The opinion of the Court of Appeals (R. 47–50) is reported at 202 F. 2d 239.

JURISDICTION

The judgment of the Court of Appeals was entered on February 26, 1953 (R. 50). The

jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the six-year limitation period contained in Section 4 (c) of the Commodity Credit Corporation Charter Act of 1948, as amended, for the bringing of suits "by or against the Corporation," is computed, for claims of the Corporation against private individuals which accrued prior to the enactment of Section 4 (c), from the arising of the cause of action or from the statute's effective date.

STATUTE INVOLVED

Section 4 (c) of the Commodity Credit Corporation Charter Act of June 29, 1948, 62 Stat. 1070–1071, as amended by Section 5 of the Act of June 7, 1949, 63 Stat. 154, 156 (15 U. S. C. (Supp. V) 714b (c)), provides in pertinent part:

> * * * No suit by or against the Corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought. * * *[1]

STATEMENT

This action was instituted by the United States on February 29, 1952, on the basis of a

[1] Section 4 (c), as originally enacted, provided a four-year period of limitations. Section 5 of the 1949 Act, which amended the original 1948 Charter Act, modified Section 4 (c) to enlarge the period of limitations from four to six years.

claim of the Commodity Credit Corporation, a wholly owned corporation of the United States chartered by Congress in the Commodity Credit Corporation Charter Act of June 29, 1948 (62 Stat. 1070, 15 U. S. C. (Supp. II) 714 *et seq.* (the 1948 Charter Act)), and the successor in interest to the corporation of the same name previously chartered under Delaware law.* The purpose of the suit was to recover from Harold T. Lindsay, a wool handler, his sureties, and Draper and Company, Inc., a warehouseman, for damage to wool owned by the Corporation and stored by Lindsay while in his possession in the warehouse of Draper and Company (R. 3). This damage occurred not later than February 26, 1945.

According to the allegations of the complaint, Lindsay entered into a Wool Handler's Agreement with the Corporation to purchase, handle, store and sell domestic wool for the account of the Corporation under the 1944 Wool Purchase Program "to assist in supporting the market for domestic wool, and in assuring the immediate availability of wool for wartime requirements." (R. 8). Under the Agreement, Lindsay agreed to act as agent to pur-

*Section 16 of the Charter Act (15 U. S. C. (Supp. V) 714n) had transferred to the federally incorporated Commodity Credit Corporation the "rights, privileges, and powers, and the duties and liabilities of the Commodity Credit Corporation, a Delaware corporation" and further provided that enforceable claims of or against the Delaware Corporation (which was to be dissolved (Section 17)) "shall become the claims of or against, and may be enforced by or against," its federally incorporated successor.

chase, handle, store, and sell domestic shorn wool for and on behalf of Commodity Credit Corporation. The Corporation agreed to reimburse Lindsay the amounts paid for the wool and expenses authorized under the Agreement in handling and storing the wool, and to pay a fee for his services as handler. To secure the proper performance of this Agreement, Lindsay furnished to the Corporation a performance bond in the amount of $200,000, on which Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America were sureties (R. 33–36). The terms of the Agreement required Lindsay "to provide proper storage" for the wool and to "take such action as may be necessary to keep such wool in good condition" (R. 21–22). On February 26, 1945, Lindsay returned to the Corporation a quantity of wool which he had acquired and stored with Draper and Company (R. 5). The wool when so acquired and stored had been in good and undamaged condition but when it was returned to the Corporation it was wet and damaged due to the failure of Lindsay to perform his obligations under the Agreement to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition (R. 4, 5). By this suit, the United States sought to recover from the respondents damages in the amount of $1,127.03, with interest and costs (R. 4, 5).

The respondents moved to dismiss the complaint on the ground, among others, that the action was barred by the six-year statute of limitations imposed by Section 4 (c) of the 1948 Charter Act, as amended, *supra*, p. 2 (R. 37–39). The district court dismissed the complaint, rejecting the Government's contention that the time for bringing suit on claims which had accrued prior to the enactment of the limitation provision began to run from the date of that enactment (June 29, 1948) (R. 42).

The Court of Appeals for the First Circuit affirmed. It held that the "literal meaning" of Section 4 (c), *i. e.*, "'accrued' as that word is ordinarily used," clearly was retroactive to the date when the cause of action came into existence (R. 48). While the court went on to recognize that this Court had in several cases construed similarly worded statutes of limitations "to have prospective effect only, that is, to affect existing causes of action only from the time of the passage of the statute limiting time for suit" (R. 49), the court regarded these cases as inapplicable. The statutes in those cases were construed as prospective, according to the court, "only for the purpose of preventing the statutes from summarily cutting off existing rights, and for this reason being unconstitutional" (R. 49), but curtailing the Government's right to sue by a retroactive construction in the instant case would not raise any constitutional problems (R. 49).

REASONS FOR GRANTING THE WRIT

1. The cause of action on which the Government's complaint was based in the present case came into existence on or about February 26, 1945. At that time, there was no federal limitation provisions on the Government's instituting suit on such claims. Section 4 (c) of the Charter Act, enacted June 29, 1948, imposed the first statute of limitation on filing suit on claims "by or against the Corporation" and, as amended, authorized such a suit "within six years after the right accrued on which suit is brought * * *." The instant complaint was filed in February 1952, about 3½ years thereafter.

The holding of the court below that the six years allowed by Section 4 (c) runs from the date when the Government's cause of action came into existence, despite the fact that the claim arose prior to the enactment of Section 4 (c), is in square conflict with *Field Packing Co.* v. *United States*, 197 F. 2d 329 (C. A. 6).[1] In the *Field Packing* case, which, like the instant case, involved the application of Section 4 (c) to a claim of the Government arising prior to the enactment

[1] Several district courts have also held that the limitations provision of Section 4 (c) is computed from the effective date of the Act. *United States* v. *H. Bowden*, No. 195 (N. D. Ga.); *United States* v. *R. S. Hain*, No. 706-N (N. D. Ala.); *United States* v. *Rabinoff*, No. 12290-Y (S. D. Calif.); *United States* v. *Anderson*, No. 1343 (W. D. Wash.), appeal pending (C. A. 9); *contra: United States* v. *Marine Junk Co.*, No. 1155 (S. D. Ala.), appeal pending (C. A. 5).

of the statute, the Sixth Circuit, in a *per curiam* opinion, expressly rejected as "not well grounded" the contention of the appellant there—identical with the ruling of the court below here—that, even as to Government claims predating Section 4 (c), the time for bringing suit ran from the date when the claim came into existence, although at that time there was no limitation provision applicable to the Government. Instead, the Sixth Circuit held that Section 4 (c)

> * * * was intended to operate prospectively and not retroactively, it being established that no statute of limitation shall be given retroactive effect unless such construction is required by explicit language or by necessary implication, see Fullerton Krueger Lumber Co. v. Northern Pacific Ry. Co., 266 U. S. 435, 437, 45 S. Ct. 143, 69 L. Ed. 367; Sohn v. Waterson, 17 Wall. 596, 84 U. S. 596, 21 L. Ed. 737; Cf. Shwab v. Doyle, 258 U. S. 529, 534, 42 S. Ct. 391, 66 L. Ed. 747; United States Fidelity & Guaranty Co. v. Struthers Wells Co., 209 U. S. 306, 314, 28 S. Ct. 537, 52 L. Ed. 804; Claridge Apartments Co. v. Commissioner of Internal Revenue, 323 U. S. 141, 164, 65 S. Ct. 172, 89 L. Ed. 139; United States v. St. Louis, S. F. & T. R. Co., 270 U. S. 1, 3-4, 46 S. Ct. 182, 70 L. Ed. 435.

The court below recognized the conflict between its ruling and that of the Sixth Circuit, but since it did "not find the opinion of the Court of Ap-

peals for the Sixth Circuit in *Field Packing Co. v. United States*, 197 F. 2d 329 (1952) persuasive" (R. 50), refused to accept the Sixth Circuit's holding.

2. (a). We believe that the holding of the First Circuit that Section 4 (c) applies retroactively to claims of the Commodity Credit Corporation is erroneous. This decision is based on "giving the statutory language its literal meaning" (R. 48). But the statutory language relied on consists solely of the word "accrued." While "accrued," as applied to after-arising claims, undoubtedly is equated with the cause's coming into existence, several decisions of this Court have established that "accrued" is not to be given that meaning when applied to claims pre-dating the statute's enactment. *Sohn* v. *Waterson*, 17 Wall. 596; *Herrick* v. *Boquillas Cattle Co.*, 200 U. S. 96, and *United States* v. *St. Louis, Etc. Ry. Co.*, 270 U. S. 1; *Lewis* v. *Lewis*, 7 How. 776, 778; *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190, 199, 200–202; *United States v. Morena*, 245 U. S. 392, 395; *Fullerton Company* v. *Northern Pacific*, 266 U. S. 435; see also *The Fred Smartley, Jr.*, 108 F. 2d 603 (C. A. 4), certiorari denied *sub nom. S. C. Loveland Inc.* v. *Pennsylvania Sugar Co.*, 309 U. S. 683; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9). In each of these cases, the limitation provision was formulated in terms of when the claim "accrued," yet the courts have uniformly held that, as to claims arising before the statute's

enactment, the time for instituting suit was not to be computed from the claim's coming into existence but rather, at the earliest, from the statute's effective date.

The court below recognized that newly imposed statutes of limitations are normally read as prospective only. However, it ruled that only where rights of private individuals *inter se se* are involved is such a construction appropriate because of constitutional problems which would be raised by a retroactive construction.[4] Since no problems of constitutionality would be presented by a retroactive application of Section 4 (c) here, where it is the Government which is asserting a claim against a private individual, the court concluded that there was no occasion for according the Government the benefits of the presumption against retroactivity.

But although there is no constitutional obstacle to Congress' cutting off at any time the Government's right to sue, this Court has consistently ruled that "[s]tatutes of limitations against the United States are to be narrowly construed" so as to

[4] As between private litigants it is clear that a newly enacted statutory provision which has the effect of barring (or not allowing a reasonable time in which to assert) a claim would be unconstitutional. *Sturges* v. *Crowninshield*, 4 Wheat. 122, 207; *Edwards* v. *Kearzey*, 96 U. S. 595, 603; *Terry* v. *Anderson*, 95 U. S. 628; *Koshkonong* v. *Burton*, 104 U. S. 668; *Vance* v. *Vance*, 108 U. S. 514; *Wilson* v. *Iseminger*, 185 U. S. 55, 62; *Ochoa* v. *Hernandez*, 230 U. S. 139; *Carscadden* v. *Territory of Alaska*, 105 F. 2d 377 (C. A. 9).

favor the Government. *Independent Coal & Coke Co.* v. *United States*, 274 U. S. 640, 650. See also, *Du Pont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 462; *United States* v. *Whited & Wheless*, 246 U. S. 552, 561; *Harp* v. *United States*, 173 F. 2d 761, 763–764 (C. A. 10), certiorari denied, 338 U. S. 816; cf. *United States* v. *Nashville, C. & St. L. Ry. Co.*, 118 U. S. 120, 125. Moreover, Section 4 (c) applies equally to suits "by or against the Corporation"; there is nothing in the Act which would justify treating suits *by* the Corporation differently from those *against* the Corporation and as to the latter the retroactive construction adopted below might raise the very constitutional problems feared by the court.[5]

In any case, the premise that limitations statutes of this type are construed prospectively solely to avoid constitutional doubts is erroneous. Wholly apart from constitutional restrictions, which are quite narrow, the courts have consistently been cautious in reading non-jurisdictional legislation retroactively[6]—a reluctance stemming from the desire to avoid the often inequitable results of legislation which interferes with antece-

[5] The court below recognized that in a suit by a private individual against the Corporation constitutional questions might proscribe a retroactive construction (R. 49–50).

[6] *Brewster* v. *Gage*, 280 U. S. 327; *United States* v. *Magnolia Co.*, 276 U. S. 160, 162–163; *Hassett* v. *Welch*, 303 U. S. 303; *Claridge Apartments Co.* v. *Commissioner*, 323 U. S. 141, 164; *Addison* v. *Holly Hill Fruit Products*, 322 U. S. 607; and cases cited *supra*.

dent rights or which ascribes "a quality or effect to acts or conduct which they did not have or did not contemplate when they were performed." *Un. Pac. R. R.* v. *Laramie Stock Yards*, 321 U. S. 190, 199. The principle has accordingly become well established that a statute (not involving the jurisdiction of courts) "is not to be given retroactive effect unless such construction is required by explicit language or by necessary implication." *Bruner* v. *United States*, 343 U. S. 112, 117, fn. 8. See also *United States Fidelity Co.* v. *Struthers Wells Co.*, 209 U. S. 306, 314; *Shwab* v. *Doyle*, 258 U. S. 529, 534; and cases cited in fn. 6, *supra*, p. 10. The presumption against retroactivity of newly imposed statutes of limitations is, we submit, merely one aspect of this principle applicable to construction of legislation generally, and as such is plainly not based solely on constitutional grounds. *Un. Pac. R. R.* v. *Laramie Stock Yards*, 231 U. S. 190, 199; *United States* v. *St. Louis, Etc. Ry. Co.*, 270 U. S. 1.[1] In these circumstances,

[1] *United States* v. *St. Louis, Etc. Ry. Co.*, 270 U. S. 1, involved Section 16 of the Transportation Act of 1920, 41 Stat. 456, which provided: "All actions at law by carriers subject to this Act for recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues and not after." In that case, suit was brought by the railroad against the United States to recover for transportation services rendered to the War Department. The United States defended on the ground, *inter alia*, that the limitation provision applied to claims which arose prior to the passage of the 1920 Act. It was held that the 1920 Act had no application to causes of action

whatever the literal meaning of "accrued" as used in Section 4 (c) may be, it falls short of the "clear, strong and imperative" language (*United States Fidelity Co.* v. *Struthers Wells Co.*, 209 U. S. at 314) required to overcome the presumption against retroactivity.

(b). Apart from the probability that Congress was aware of the settled judicial construction of newly imposed statutes of limitations and acted in light thereof (*Shapiro* v. *United States*, 335 U. S. 1, 16; *Morissette* v. *United States*, 342 U. S. 246, 261–263), the legislative history of Section 4 (c) demonstrates that Congress expected it to operate prospectively in accordance with the usual rules. The time limitation was made applicable to claims *by* the Corporation by a Conference Committee compromise,* effected and accepted by both the Senate and the House on

existing at the date of the passage of the Act. "That a statute shall not be given retroactive effect unless such construction is required by explicit language or by necessary implication is a rule of general application. * * * There is nothing in the language of paragraph 3 of § 16, or in any other provision of the Act, or in its history, which requires us to hold that the three-year limitation applies, under any circumstances, to causes of action existing at the date of the Act." *Id.*, p. 3. See *Bruner* v. *United States*, 343 U. S. 112, 117, fn. 8.

*The original Senate Bill (S. 1322), as reported by the Senate Committee and as passed by the Senate, provided a two-year limitation on claims *against* the Corporation. The House substitute bill (H. R. 6263) provided for a four-year period of limitations on claims *against* the Corporation. Neither version provided for a time limitation on claims *by* the Corporation.

June 19, 1948 (94 Cong. Rec. 9132, 9311), in the closing rush of Congressional business preparatory to adjournment on June 20. There was no discussion of the limitation provision during the debate on the floor of either the House or Senate. However, Senator Aiken, who was a member of the responsible Senate Committee, the manager of the bill on the Senate floor and the senior Senate conferee, submitted an analysis of the bill, as reported by the Conference Committee, in which he stated (94 Cong. Rec. A-4408, A-4409):

> Another change made by the conference committee was to make the proposed 4-year statute of limitations applicable not only to claims against the Corporation but also to claims by the Corporation. The committee felt that the statute of limitations should be applicable to claims by the Corporation as well as to claims against the Corporation. As provided by section 16, the proposed 4-year statute of limitations will not limit or extend any period of limitation otherwise applicable to claims against the Delaware Corporation. *With respect to claims by the Corporation, the 4-year period of limitations will not begin to run on claims of the Delaware Corporation transferred to the Federal Corporation until June 30, 1948, the effective date of the new charter.* [Emphasis supplied.]

This statement by Senator Aiken, who had a leading role in connection with the 1948 Act, is entitled to great, if not conclusive, weight.*

The court below rejected this legislative history as not persuasive because of what it considered the clear language of Section 4 (c) (R. 50). However, as we show *supra*, pp. 8–12, the language of Section 4 (c) does not clearly require the reading given it by the court below, particularly in view of the consistent construction to the contrary accorded to similar statutes. And even if Section 4 (c) were unambiguous on its face, resort can properly be had to the explicit views of the chief Senatorial sponsor of the measure. *United States* v. *American Trucking Assns.*, 310 U. S. 534, 543–544; *United States* v. *Dickerson*, 310 U. S. 554, 561–562; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *United States* v. *Public Utilities Commn. of California*, 345 U. S. 295, 315–316.

3. The issue involved is important and the conflict between the court below and the Sixth Circuit should be resolved by this Court. The Department of Agriculture advises that, at the present

* *United States* v. *City and County of San Francisco*, 310 U. S. 16, 30–26; *Humphrey's Executor* v. *United States*, 295 U. S. 602, 625; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 650; *McLean* v. *United States*, 226 U. S. 374, 380; *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.* v. *Acme Fast Freight, Inc.*, 336 U. S. 465, 471–476; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479–480.

time, the Commodity Credit Corporation has about 141 claims, totalling approximately $1,250,000, which would be barred under the decision of the court below. Venue with respect to these claims, on some of which suits have already been instituted, lies in 31 different district courts located in every judicial circuit, except the District of Columbia. It is therefore probable, should certiorari be denied, that many, if not all, of the other courts of appeals will be called upon to construe Section 4 (c). The issue is now pending on appeal in the Court of Appeals for the Ninth Circuit in *Anderson* v. *United States* (see fn. 3, *supra*, p. 6), and notice of appeal to the Court of Appeals for the Fifth Circuit has been filed from the ruling of the District Court for the Southern District of Alabama in *United States* v. *Marine Junk Co.* (see fn. 3, *supra*, 6).

We are also informed that the General Accounting Office is now engaged in reauditing the transportation charges paid by Commodity Credit Corporation during the war years 1943 through 1946, and collections have already been made by that office and deposited to the capital funds of the Corporation in the amount of approximately $1,500,000, representing overpayments by the Delaware Corporation in 1943 and 1944. It is estimated that the reaudit, when complete, will disclose overpayments aggregating between $7,000,000 and $8,000,000, which the Corporation will

seek to collect either through suit or by offset. Collections have already been made, in many instances, by means of deductions from bills presented by carriers for transportation charges on shipments recently made by other governmental agencies. If any of these offsets are disputed, the carrier may file suit in a district court or, if the claim exceeds $10,000, in the Court of Claims. Since the defense to such actions would generally be a counterclaim for these overpayments made during 1943 to 1946, this defense would be barred if Section 4 (c) were held to be retroactive. The question presented by this petition has, therefore, a large and continuing importance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT L. STERN,
Acting Solicitor General.

MAY 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953